A physician responsibility:

The union between Medicine, Medical Law and Bioethics

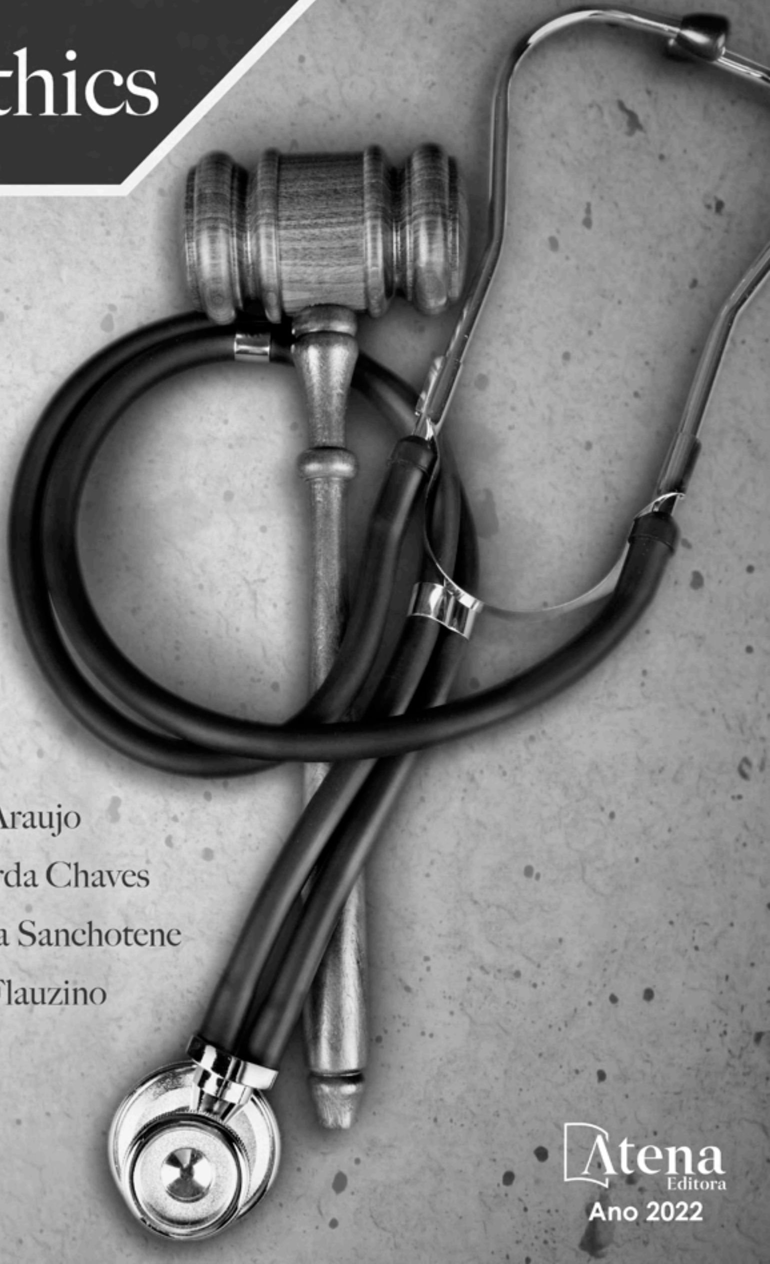


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Atena Editora
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CIÊNCIAS BIOLÓGICAS E DA SAÚDE

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God gives us people and things,
so we can learn joy...
Then he picks things up and people
to see if we're capable of joy
all by themselves...
Catafalque... the joy he wants
Guimarães Rose

DEDICATION

My family and friends, who have always believed in me.

THANKS

I thank God, who was my greatest strength in times of anguish and despair. Without him, none of this would be possible. Thank you, sir, for putting hope, love and faith in my heart.

Thank you, my God, for blessing my way through this work. My faith in you has nourished my focus, my strength, and my discipline. I am grateful for the blessings that have fallen not only upon me, but also on all friends and family.

PREFACE

Writing a preface to a book is an attitude and a task that causes me a joy without size! It is about knowing a work in its first version, full of dreams, before being shown to the world.

I am usually invited to write presentations and prefaces to works done by people close to me, my line of research, my studies, my academic universe. I am always very happy with the distinction they give me, I am honored to be able to do so and be able to participate in this unique moment of production, of socialization of a text, of a work, which is always the realization of a dream, of an affective intentionality - which is in fact the substrate of every writer - as well as of every written work. To write is to give yourself to the world, to reveal oneself to people, to society, is to leave a trail of clues about what you love, about what you think and believe, about life, history, the world, art, finally, love, suffering, culture, among so many other dimensions. I always consider it courageous who writes and who delivers what he writes to society as a whole, in a work always revealing of its author, or of its authors or protagonists, of its steps and missteps, of its intentions and purposes.

I received the invitation of Pedro Pompeo to preface his book, highlighted here, on the responsibility of the doctor. I then briefly report on my reading experience. After the presentation of the book, I began reading chapter 2, in which it was addressed historical aspects of medicine, dating back to biblical times, it was a very rich reading, which brought a perspective view of how we got here.

In chapter 3, the author entered the legal sphere of medical error. Here it was necessary legal knowledge. Here I unlike the work of Doctor Jhonas Geraldo Peixoto Flauzino, who wrote with mastery and objectivity. His writing is a reflection of his undergraduate and master's degree in law, which, together with the medical knowledge he obtained in his second undergraduate degree, that of medicine, enabled a fluid and palatable reading.

Already in chapter 4, we have the so promised alliance between medical and legal content, that as the authors said "law and medicine are branches of a common trunk", as they really are. But if this is true, legitimate is that ethics is the mother, the root, the core. Hence, the relationship between Medicine, Law and Bioethics.

Although they seem synonymous, Medical Ethics, Bioethics and Medical Law are distinct fields of study. However, in medical practice, they all have application and functionality. Knowing the principles of Bioethics, as well as the foundations of Medical Ethics are of great value to guide conducts and elaborate defenses in the field of Medical Law.

It is an academic book, because it is a text full of reflections, of concepts extracted from articles and texts consecrated in medical and legal literature. In this work, we see the

neutrality of the authors, who sought to bring facts and concepts enshrined in the literature. So

I recommend to all parents, educators, managers, teachers, students, researchers, in short, to all people who know how to nurture hopes of love. The human condition is always surprising and innovative. Each person marks the history of our historical and cultural march, and opens endless horizons of possibilities and original emancipations. This book is an invitation.

Mariana Peixoto Pereira,

Campinas, autumn 2021

SUMÁRIO

ABSTRACT

The idea of civil liability arises from the principle that whoever causes harm to another person, whether moral or material, must restore the good to the state in which he was before his harmful act, and, if it is not possible, should at least compensate the one who suffered the damage. As a rule, subjective responsibility is based on guilt, as this, the Consumer Protection Code, at certain times, admits subjective accountability, requiring an investigation of the guilt of liberal professionals. It is understood that the contractor undertakes to use the appropriate means to achieve a certain result, so the professional's behavior must be to act with clarity and specificity, fulfilling the obligation to the one who was forced, however, if in the professional relationship that was processed, he behaved appropriately, compatible with what was hired, is exempt from liability. Hence, the responsibility for medical error is subjective if it is an obligation of medium, being a result when it comes to aesthetic procedures. There is also a current that refers to anesthesiology as an obligation of result.

INTRODUCTION

Life is a theme that keeps coincidence of studies in the field of medicine and law, being areas that are increasingly creating fruitful threads, expressing perspectives of more diligent mutual debates, due to a recent understanding of society to question medical activity in the judicial sphere, in a process of judicialization of health.

In this sense, the present work seeks its sources in medical and legal literature. In the medical literature, because the work has the scope to study the relationship between the medical professional and the patient, whose quality of relationship directly implies in any judicial litigation. because this relationship is ensnated by the legal system, noisily, by the institute of civil liability.

The understanding of the moral issue in medical activity, which has been remarkable since hippocrates' time, involves concepts that lead to an awareness of the physician's responsibility for the patient and the obligation to repair a possible harm caused.

Over the years, the changes in the public health system have led to the institutionalization of the patient and the abandonment of the old customs, thus culminating in the dissatisfaction of the population, which manifests itself and provides raw material for the press.

CAPÍTULO 1
HISTORICAL ASPECTS OF MEDICINE

When science was still crawling more than two millennia ago, how did people deal with diseases? At a time when microorganisms had not yet been discovered and little was known about infectious mechanisms, the search for cure was much more a matter of faith. It is in this scenario that the cult of the god Esculápio arises, which began in VI to.C., in Thessaly, and motivated the construction of more than 300 temples along the mediterranean and western Europe.

Esculápio is the Latin derivation of the name of the Greek god Asclepius. Son of the god Apollo with the mortal Corons. Legend has it that it was created by centaur Chiron, who educated him in the art of medicinal herbs and surgeries. He became, therefore, the most appropriate god in the pantheon for the sick and despair. According to legend, Esculápio had three daughters: Panacea (goddess of the healing of all evils) Iaso, (goddess of remedies) and Higeia (goddess of the preservation of health). (references: http://www.ccms.saude.gov.br/noticias/esculapio-o-deus-da-medicina)

In these temples, guided by medical priests called asclepíades, the sick were accommodated in pavilions to be purified through oils passed on the skin, baths, and fasts. It was believed that when they smituded, Schooner's power would heal them or send guidance on therapeutic and spiritual procedures. The eventual deaths were attributed to the fact that the patients had not purified themselves properly or were incurable.

In one of these temples, on the Greek island of Cós, Hippocrates was formed, born in 460 .C. Unlike his contemporaries, he adopted a more experimental and scientific line for the treatment of diseases and laid the foundations of what would become Western Medicine. The contribution of the temples of Esculápio goes beyond the fact that they were the forerunners of hospitals in the Western world, they also bring an important symbolic aspect. The Staff of Esculápio, symbol of Medicine in several countries (including Brazil) and which is part of the flag of the World Health Organization (WHO) is a reference to the ancient temples of the Greek god (references: http://www.ccms.saude.gov.br/noticias/esculapio-o-deus-da-medicina)

1 I MEDICINE IN BIBLICAL TEMPLES

What was medicine like in Biblical times what was medicine like in Biblical times? In

this article we will understand what medicinal practices were like in those times. Palestinian medicine consisted of highly skilled physicians, but also wizards and charlatans. The patient who needed assistance could receive everything from excellent care to a magic potion or even a poison. That's why the people of the New Testament had the most diverse opinions about doctors. To know what medicine and medicinal practices were like in biblical times, we need to know what illnesses were like. The HIGH RATE OF DISEASES Who wished to practice medicine, would have many opportunities for this, because patients were not lacking. We see Jesus constantly harassed by a multitude of paralyzed, crippled, blind, sick people, people with mental disorders, or other serious problems. Many of these diseases were incurable and highly contagious. Whenever Jesus came to a city, the people of the place brought him sick family and friends (Mk 6:56). It was the cry for help of a population suffering from severe physical suffering (Mt 8:16; Mc 1.34; 6.13; Lk 4:40). Medicine was limited, and therefore could not keep up with the constant increase in diseases. THE DOCTORS IN BIBLICAL TIMES Some people appreciated the doctors and had great respect for them. Others, however, thought they were the worst criminals on earth. Therefore, the rabbis created proverbs about this class. One of these proverbs was this: "All doctors, even the best, deserved geena (hell)." Another said, "Don't live in a city ruled by a doctor." Jesus quoted a very popular proverb, also related to the medical class. He said that people would probably say to him, "Doctor, heal yourself" (Lk 4:23). It is a negative attitude of those who turn to the doctor and tells him that if his medicine is good, he should apply it to himself first. Another negative mention of the medical class in the New Testament is the one we find in Mark 5:26. There we have the story of a woman who had been bleeding for 12 years, and the doctors had not been able to heal. The Bible says that she had suffered very much at the hand of several of them, who, in addition to not healing her, had still taken all her money. The evangelist Luke, who was also a doctor, reports the same fact, but omits this apparent criticism of the medical class. THE FEES OF DOCTORS This issue of the payment of medical services has always been very delicate. The authors of the Talmud express contradictory feelings about the subject. On the one hand, they condemn these professionals for overcharging. But on the other hand, they advise the people not to use the services of doctors to charge very little. THE SCHOOLS OF MEDICINE IN BIBLICAL TIMES Luke is the best-known doctor of the New Testament (Col 4:14). However, we know nothing about the studies he did, nor about how he practiced medicine. We are aware that you were traveling with the Apostle Paul. Probably as a medical missionary, taking care of the other missionaries they followed, as well as the sick they encountered. At that time there were already several medical schools. And it's possible lucas received an academic background. Some scholars in Scripture claim that the vocabulary he employs both in his Gospel and in the book of Acts reveals that he studied this science. EGYPT MEDICAL SCHOOLS The most famous medical school of biblical times was alexandria, Egypt, founded in the year 300 A.C. Its teachers were in a position to give specific instructions regarding various diseases. Many of the

knowledge disseminated there came to Israel as well as to other countries. The medicine practiced in Egypt was mixed with superstitions and popular beliefs. However, many of these remedies are still used to this day. That's because they're pretty practical. The "Papyrus Doctor Edwin Smith" contains much information about the medical knowledge of the ancient Egyptians. This document mentions forty-eight types of lesions, and indicates the recommended treatments for ten ailments in which brain lesions were suspected, etc. The fractures were treated with an adhesive plaster cast. Some of the skeletons found in archaeological excavations show very well-established fractures. One remedy indicated as laxative was castor oil. There were also herbal medicines, which were used in the treatment of various diseases. Already at that time there were specialists in certain evils. Sometimes these doctors went to other places in the world known to teach classes or even simply to practice medicine. The medical knowledge of the ancient Egyptians was quite advanced for their time. Although compared to modern medicine it is considered extremely primitive. But it was this school that laid the foundations of current medicine. MEDICAL SCHOOLS IN PALESTINE In Palestine a special license was required for the exercise of the profession. It is likely, however, that many doctors would ignore this requirement. In every city there should be some kind of clinician. In Israel, many rabbis also performed this office. Such a practice had its roots in the fact that the priests of the Old Testament were charged with taking care of the health of the people. On that occasion, there should be a doctor permanently in the temple to treat the priests. As they had to be barefoot while performing their function, they were susceptible to various diseases. The contact with the cold stone floor of the sanctuary and the constant baths ended up targeting their health. A very common disease among them was disentery. In Christ's time there were many specialists in and around Jerusalem. It is known that there were general practitioners, psychiatrists, dentists, gynecologists and obstetricians. There were also many magicians and practitioners of the occult who claimed to perform cures. SURGERY (MEDICINE IN BIBLICAL TIMES) Physicians had several types of surgical instruments, including knives, scalpels, tweezers, saws and staples, which allowed them various types of surgical intervention. The Jewish doctors even did cataract removal. See some surgeries that were part of medicine in Biblical times. HEAD SURGERies even performed brain surgeries. They made small square openings in the skull through the trepanation process, and operated there. Skeletons of individuals who have undergone this type of surgery have already been found. In which it was found that the skull bone was perfectly glued, which leads us to believe that the patient survived the treatment. There are others, however, that the bone has not glued. It is assumed, then, that in these cases the surgery failed. In some of the skeletons found, the skull has more than one orifice, which indicates that doctors have made more than one attempt at these patients. Bones with metal plates have also been discovered. He had anesthetized the patient, giving him sleeping pills, probably opium-based drugs. Then the hair was shaved at the place to be operated. The skin was cut and removed, and finally, the

skull was opened with a small saw. This operation was performed in patients who complained of strong pressures inside the head. LEG SURGERies The use of fake legs demonstrates that amputations were performed. However, some rabbis forbade the carrier to use it on Saturday, perhaps because the idea of "carrying" the prosthesis constituted a form of work. There is also evidence that surgeries have been performed for the removal of kidneys. RESEARCH AND EXPERIMENTS In addition to treatments, the most serious doctors and surgeons also carried out research and experiments. These men were usually people of great vision. One of them was Mar Samuel, a physician of many resources, who even created a method to examine his own stomach. Part of the medical knowledge was obtained through direct observation. In addition to receiving the teachings in the traditional way, they dissectised human corpses and experimented on animals. CIRCUMCISION The most common surgery in Israel was circumcision. All the boys, upon completing eight days of life, had this operation, which consisted of the removal of the foreskin. AS SURGERY WAS DONE IN the Old Testament, this surgery was done with a stone knife, which despite giving the idea of a coarse object, could actually be a very sharp cutting instrument. In Jesus' time, metal knives were used. THE CUSTOM OF CIRCUMCISION In obedience to this custom, Jesus was also circumcised (Lk 1:59; 2.2) And the child had to be circumcised even if the eighth day of life fell on a Sabbath. To this day, Jews and some Gentiles still practice circumcision. From a medical point of view it is necessary to wait until the eighth day of life for the operation. It's only around the eighth day that the liver is already producing enough vitamin K to clot the blood. Did the ancient Jews know that? (Gen 17:12.). Did they learn this from experience, by divine revelation, or was the day of circumcision determined at random? If a Gentile decided to become jewish, he had to be circumcised. So he thought seriously before taking that step. THE TIMOTHY EXAMPLE This question played an important role in Timothy's life (At 16.3). His father was Greek and his mother Was Jewish. Due to an objection from the father, he had not been circumcised as a child. Then the Apostle Paul, who wished to take him with him on a missionary journey, circumcised his young companion. In this way they would prevent the Jews from refusing to listen to his preaching, claiming that he was uncircumcised and "half" Jewish only. And the interesting thing is that this simple practice turned out to be a serious problem in the early church. Some raised the idea that for a Gentile to become a Christian, he had to be Jewish. And to be Jewish you had to be circumcised. But the Council of Jerusalem ruled that the Gentiles did not need to observe Jewish laws (As 15:19). THE SANGRIA A pitiful tradition of antiquity that lasted until around the year 1800 A.D. was the practice of sangria. Two methods were more used. First, leeches were placed in the patient's body so they could suck his blood. The other consisted of making a cut at some point in the body and applying a suction cup to suck the blood. But if the doctor overdid the treatment, it could lead to the patient's death. Bloodletting was done because the disease was believed to be in the blood. Removing a part of it, the doctors hoped to inhibit the advance of the disease. They recommended that

all people under 40 undergo a bleed every 30 days. Although this practice was somewhat brutal, it indicated that they had an advanced concept about the origin of the diseases. They knew that the cause was internal problems and, not by external, supernatural influences. PRESCRIPTIONS AND MEDICATIONS If a person went to the doctor complaining of various symptoms, including an unexplained weight loss, it was very likely that he would recommend goat's milk. This food was widely consumed in the first century. Because it's thought to be very healthy. For the most common diseases, there were several medications. Although aspirin had not yet been created, they used certain remedies as often as we take pills. See how important food was in biblical medicine. THE FOODS IN BIBLICAL TIMES MEDICINE Some doctors prescribed a mixed barley porridge with other ingredients for the treatment of some organic ailments. Doctors also recommended some vegetables for treating certain diseases. In antiquity, they thought that the sheet of the mandrake possessed aphrodisiac powers, or was a kind of love potion (Gen 30:14). HONEY IN MEDICINE IN BIBLICAL TIMES A product that many people considered a good tonic was honey (Pr 16:24). They used it not only for sore throats, but also to treat wounds, placing it directly on the wound (and some still do it today). Honey was believed to absorb water from bacteria and thus destroy ed them. For a simple stomach ache, there were numerous strange remedies like rosemary, hyssop, rue, animal grass, and some types of palm trees. Anyone suffering from irregular heartbeats might have to ingest a good glass of barley with curdled milk. The drugs had the most varied origins. While one could have a reliable other formula could already be related to magic processes. One method used to treat fevers, for example, was: Seven splinters of seven palm trees, seven seven plank wood scrapes, seven nails from seven bridges, seven handfuls of ash from seven stoves and seven hairs from seven old dogs. You put everything in a bag and hung it around the patient's neck by a white string. We do not know whether the apostle Peter's mother-in-law tried to heal by this magical process (Mt 8:14,15). Some people healed, but some people didn't. The Apostle Paul himself, a believer of great faith, may have suffered from an illness from which he could not heal (2 Cor 12:7-9). Therphine was also so ill once that he could not travel with Paul (2 Thesm 4:20), and Epafrodito was so ill that he almost died (Phil 2:25-27). Divine healing did exist, but this did not prevent diseases, illnesses, and suffering. Paul had to advise Timothy to resort to home remedies (1 Tim 5.23). OLIVE OIL AND WINE (MEDICINE IN BIBLICAL TIMES) The most popular home remedies were olive oil and wine, used in the treatment of numerous diseases. The "good Samaritan" may not have knowledge of medicine, but his concern for the assaulted man was to apply oil and wine to his wounds (Lk 10:34). Sometimes they mixed the two elements. In others, they applied them separately. Although the oil had a more ceremonial than medicinal meaning, the fact is that it constitutes one of the healing elements described by James in 5.14. Jesus' disciples performed miraculous healings in which they made use of the anoint with oil (Mk 6:13). Another purpose of the oil was to relieve the weariness of weary travelers. Jesus once would have liked him

to have anointed his head with oil, for he was tired (Lk 7:46). Some oils and perfumes could reach very high prices, depending on the essences (Mt 26.9). Wine was also used in biblical medicine. It is possible that in many cases people would take them when they no longer knew what to do. When someone felt an indefinite malaise, they might try to drink wine in the hope of improving their spirits. If someone fainted, they'd give them the drink to restore their mood. But if, on the other hand, a person was upset or nervous, they would give him the drink to relax. At funerals, the dead man's relatives used to drink ten glasses of wine. Paul himself recommended this home remedy to Timothy (1 Tim 5 :23). The practice of indicating wine for stomach pains was probably related to the custom of mixing this drink into water to destroy bacteria and microorganisms. TEETH AND DENTURES Palestinians ate figs, dates, honey and other sweet foods that damaged their teeth. So they had a lot of cavities, and it was common to have false teeth. The great job of dentists was to cure toothades. The most used products for this were garlic and pariarian root. They used to also rub salt or yeast on their gums to try to relieve pain. Those who did not take care of their teeth ended up losing them and were forced to use false teeth that were made of wood, gold or silver. BLINDNESS (MEDICINE IN BIBLICAL TIMES) The ministry of healing is appreciated in any era, but it was mainly in the first century, because the number of sick people was large. Blindness, for example, is mentioned 60 times in the Bible. Recently, Unger traveled through that territory and commented that it was difficult to see a poor person who had no problems in at least one of the views. And Parrot reports seeing a strange situation in Jerusalem, it was common to see two blind people walking together, one driving the other. It was the ulem, who wore a white band on their heads to identify themselves. And they walked all over town helping each other. Although it was a fact that they could fall "into the ravine" (Mt 15.14), this rarely happened. If there was already this practice in Jesus' time, we can deduce that he was referring to the ulemás when he made his well-known criticism of the Pharisees. RESPECTED DOCTORS Some doctors have come to win the respect and affection of the people. Luke, for example, was known as "the beloved physician" (Col 4:14). Some of the ancients called the doctors "angels of God." Because they were taken into high account, many of them were summoned to serve as witnesses in court, in the trial of criminals. If necessary, they were also called to witness executions of convicts, to verify that they were being done in the right way. All this competence further increases the credibility of Luke's Gospel. PHARMACIES (MEDICINE IN BIBLICAL TIMES) When a person did not want to go to the doctor, not to have to pay the high fees they charged, he went directly to the pharmacist or apothecary. Their trade was very similar to today's pharmacies. There they prepared and sold their medicinal herbs, but also made perfumes and a wide variety of cosmetics. They also worked with hair restorers, eye makeup and hair dye. Not all medicines were provided by pure medical science, for many of the Beliefs of the Jews were nothing but superstition. If a person had calluses, for example, they advised to put a coin under the sole of the foot, in order to relieve pain. One way to cure bleeding was

to sit at a crossroads with a glass in your hand. Then someone would come up behind the person and try to scare him. It's hard to know how much a treatment like that cost. If that didn't work out, another "miraculous" drug was a grain of barley found in the dung of a white mule. This was the study of medicine in Biblical times. https://bibliotecadopregador.com.br

2 I HISTORICAL ASPECTS OF MEDICAL ERROR

The study of medical literature and law, since the beginning of time, was born from the help to the needs of man.

In the Holy Book of Genesis, it is described that Javeh, after having created the world, made man and woman appear, offering them paradise to live.

In Eden, they would live happily and have the freedom to act as long as they obeyed the laws.

Thus, the regulation of social conduct as a precondition for living in peace emerged with men and women. Therefore, the law was born as the regulation of free conduct and the duty of submission to the rule to live in peace.

However, the couple violated the norms and, consequently, had as punishment the expulsion from Paradise, going, from that moment on, to experience suffering and death.

Then, the man developed remedies to mitigate his pain, causing medicine to emerge. Thus, in the biblical way, law and medicine were created as branches of a common trunk.

Since then, doctor and lawyer have exercised a power over men for the purpose of ensuring life and health or preserving freedom, respectively.

The physician incorporated the professional commitment of respect for life and the person, which became a fundamental duty, according to the moral norms that the profession itself imposed; however, their intervention on the patient does not always result in benefits and can often produce harmful consequences for the patient.

In antiquity, humans were concerned with devising rules for professional conduct, especially those who exercised medicine.

However, there was no medicine as we know it today, because there was no study of diseases or means of specialization for its practice.

Medical responsibility arose at a time when man realized that healing was not a divine act, but an act performed by people with certain abilities and practices. At this moment, the realization of the cure of diseases began to be seen as a profession, hence the responsibility for its practice.

In this period, what mattered was healing, and if it did not succeed in healing, the one who set out to do so would be held accountable.

Wanderlei Lacerda Panasco (1984, page 36) states that the Hamurabi Code was “the first document to deal directly with the problem of medical error. This code, in its arts. 218, 219 and 226, already provided for penalties against doctors or surgeons who commit bodily injury and kill a slave or animal.”

This code brought severe penalties to those who made mistakes in their procedures, ranging from the amputation of the hands to the degredo or death of the surgeon.

In Egypt, doctors held a high position in society.

However, in order to practice his profession, the physician should be guided by the rules determined in a book, even if this caused the death of the patient, since the use of other methods not described in the book could generate punishments. Wanderlei Lacerda Panasco (1984, page 37) teaches that :

> “In Egypt doctors held a high social position. Often confusing himself with priests. Great potentates sought their cities to treat themselves. (...) They were exempted from taxes and generally aided through “public funds. (...) According to some authors, there was a book with the rules of the exercise of medical science, which doctors should respect, appropriately. After the rules, even if the patient died, they were not punished, which would not otherwise occur.”

Doctors in Egypt were at the top of the social scale, coming to be compared with priests due to the importance of the position. However, the exercise of the activity was restricted to a set of rules contained in a book, so that they should be followed to the letter even if the patient died, because if the doctor, in order to save the patient’s life, used other means, the doctor would be subject to sanctions that could lead to death even if he had succeeded in saving the patient’s life.

After the emergence of the Aquilian Law, there came to be, among the Roman peoples, the repair of the damage, but not as a form of revenge, but as a distinction between punishment and reparation of the damage. Carlos Roberto Gonçalves (2003, page 04/05) asserts that :

> “The differentiation between “penalty” and “reparation”, however, only began to be sketched at roman times, with the distinction between public offenses (more serious offenses, disturbing of the order) and private offenses. In public offenses, the economic penalty imposed on the defendant should be collected from the public coffers, and, in private offenses, the penalty in cash was the victim.” “(...) The state thus assumed, he alone, the function of punishing. When the repressive action passed to the state, the action for damages arose. Civil liability has taken place alongside criminal liability. It is in aquilia law that, after all, a regulatory principle of damage repair is outlined.”

In the Middle Ages, the heavy sanctions imposed on doctors were eliminated. The principle by which guilt should be analyzed and individualized according to the result of the

treatment, not in professional conduct exclusively, came into force.

The obligation to indemnify was therefore derived from the human act harmful to others.

Following this line of reasoning, as Carlos Roberto Gonçalves (2003, pag. 05) teaches, French law has improved the conceptions of the Romans, if we do not see:

> "French law, gradually improving Romanesque ideas, clearly established a general principle of civil liability, abandoning the criterion of enumerating cases of compulsory composition. Gradually, certain principles were established, which had a significant influence on other peoples: the right to reparation whenever there was guilt, even if it takes, by separating civil liability (before the victim) from criminal liability (before the State); the existence of contractual fault (that of persons who do not comply with obligations) and which does not bind either crime or tort, but originates from negligence or recklessness. It was the generalization of the Aquilian principle: in lege Aquilia et levissima culpa venit, that is, that guilt, although very light, obliges to indemnify."

It is not too much to say that the evolution of the medical liability, in our legislation, has been influenced by French law, while it continues to influence to this day.

CAPÍTULO 2

CIVIL LIABILITY AND MEDICAL ERROR

According to the Legal Dictionary of the Brazilian Academy of Legal Letters, responsibility means:

> "RESPONSIBILITY. S. f. (Lat., to respond, in the acep. of ensuring, to secure.) Dir. Obr. Someone's obligation to answer for something resulting from legal business or an unlawful act. NOTE. The difference between civil and criminal liability is that it imposes compliance with the penalty established by law, while it entails compensation for the damage caused."

Pablo Stolze Gagliano and Rodolfo Pamplona Filho have the following understanding:"

> in civil liability, the agent who committed the illicit has an obligation to repair the property or moral damage caused, seeking to restore the status quo ante, an obligation that, if it is no longer possible, is converted into the payment of compensation (in the possibility of pecuniary assessment of the damage) or compensation (in the event that this damage cannot be estimated patrimonially (...) I (2016, p.46)"

In the words of Caio Mário da Silva Pereira,

> "(...) In civil liability will be present a punitive purpose to the offender, allied to a need that I designate as pedagogical, which is no stranger to the idea of guarantee for the victim, and solidarity that human society must provide to him.I (2016, p. 11)"

The Civil Code of 1916 was fundamentally subjectivist, which underpined, for many decades, the development of civil liability. However, with the advent of the Federal Constitution of 1988 and article 5, XXXII, which states that the "State will promote, in the form of the law, consumer protection", only two years, law 8.078/90 of the Consumer Protection Code was published.

An essentially objectivist code. Then began a revolution of our civil responsibility.

In the case of civil liability arising from legal imposition, the damages due are not cease to be sanctions, which arise not by reason of any unlawful act committed by the civilly liable, but by a recognition of the positive right that the damage caused was already potentially foreseeable due to professional risks.

Already in the validity of the previous Civil Code, the jurisprudence of Paraná attributed civil liability to the negligent physician. See:

> Damage repair action. Civil liability of the doctor. Guilt manifests. Indemnity due. “It is undoubtlessly negligent for the doctor who, after performing an episiotomy in parturient, does not pay greater attention to his subsequent complaints, failing to carry out a more detailed examination even though the abnormal condition, allowing the formation of an abscess of serious proportions, with perforation of the rehesh, which required emergency surgery on the day immediately after the last consultation with the professional, without any more active action being taken. In such cases, medical responsibility lies in its omission, resulting in predictable consequences, resulting in the obligation of the schooner to repair the damage.” (TJPR - 3rd C. - Ap. - Rel. Renato Pedroso - j. 22.4.86 - RT 608/160).

Civil liability is founded on the fact that no one can harm the interest or right of others.

Therefore, it describes article 927 of the brazilian Civil Code in force that “he who, by illegal act (arts. 186 and 187), cause harm to others, is obliged to repair it” and follows in its sole paragraph “there shall be an obligation to repair the damage, regardless of fault, in specific cases in law, or when the activity normally carried out by the perpetrator of the damage implies, by its nature, risk to the rights of others”.

Regarding the function of civil liability, it is necessary to transcribe the above by the author Clayton Reis (2000, p. 78-79):

> “By generating the damage the offender will receive the corresponding sanction consistent in the social rebuke, as many times as their illegal actions, until they become aware of the obligation to respect the rights of the people. (...) These people have an exact notion of social duty, consistent in a conduct framed in ethics and respect for the rights of others. In turn, the rebuke contained in the legal norm is based on the assumption that people are to understand the foundations that govern social balance. Therefore, the law has a threefold meaning: to repair, punish and educate.”

Despite the fact that it is not the main intention, civil accountability aims to return things to the status quo ante, generating a punitive effect on the offending officer by the absence of caution in the practice of his acts, demotivating him to no longer injure. Moreover, it should be emphasized the educational nature of civil accountability, which is to make public the practice that conducts that damage the rights of others will not be tolerated, thus generating the indemnification duty.

Medical responsibility has been a constant concern of the legal sciences, which is why the matter has been discussed, improved and widely debated, whether in the civil, criminal or even ethical field.

It is salutary to mention, furthermore, that the medical liability has always been the object of controversy, based on subjective theory, based on guilt, and objective theory, based on risk. However, in order to have a fair understanding of the civil liability of the medical professional, it must be taken into account that civil liability is the obligation to repair the damage arising from an action or omission.

1 I REQUIREMENTS TO SET UP THE MEDICAL LIABILITY

In order to be responsible for the physician due to harmful act caused to the patient, there must be reckless, negligent or imperita conduct that can cause harm.

In this sense, the physician may also be held accountable in cases where there is an obligation to result and it is not achieved.

It is certain that the medical professional must always act with care, zeal and expertise in the exercise of his profession. Furthermore, it must follow rules of conduct relating to the duty of information, the duty to update, the duty to attend and the duty to abstain from use.

It is observed, however, that the prevention of certain measures, in relation to medical conduct, arouses success in the final procedures.

Thematic positions have been raised around the performance of the medical professional, triggered by the emergence and application of the standards contained in the Consumer Protection Code (CDC).

Therefore, not only the doctor, but everyone who is, in the exercise of his duty of profession, must perform the good, under penalty of, in not doing so, incurring an indentive act.

This is the current understanding of the Court of Justice of the State of Paraná (TJPR):

> Civil APPEAL ACTION FOR INDEMNIFICATION FOR MORAL DAMAGES MEDICAL PATIENT ERROR THAT WAS THE DEATH SINGULAR SENTENCE THAT UPHELD, BASED ON MEDICAL NEGLIGENCE AND THE THEORY OF THE LOSS OF A CHANCE NONCONFORMISM REALIZED. PRELIMINARY CLAIM OF EXTRA PETITA INOCCURRENCE FREE LYPERABILITY MOTIVATED THE MAGISTRATE MERIT DEFECT IN THE PROVISION OF SERVICES SUBJECTIVE RESPONSIBILITY - ART. 14, § 4, OF THE CDC ACT MANIFESTLY INCOMPATIBLE BOTH WITH THE PROCEDURE PERFORMED AND WITH THE DUTY OF DILIGENCE OF A MEDICAL NEGLIGENCE PROVEN ABSENCE OF LABORATORY EXAMINATION IN CANCER TREATMENT SUBSEQUENT COMPLICATIONS THAT LED THE VICTIM TO DEATH APPLICATION OF THE THEORY OF LOSS OF LOSS OF A CHANCE OBJECTIVE AND SERIOUS MISSED MORAL DAMAGE CONFIGURATION DAMAGE IN RE IPSA DISPENSABLE PROOF AS TO THE OCCURRENCE OF CONCRETE INJURY MAINTENANCE OF QUANTUM INDEMNIFICATION (R$ 50,000.00) OF OFFICE FIX THE MONETARY CORRECTION OF THE DATE OF THE SENTENCE BY THE AVERAGE INPC AND IGP/DI SUM362 OF THE STJ INTEREST OF 1% TO THE MONTH OF THE DATE OF THE CONTRACTUAL QUOTATION LIABILITY APPEAL DEVOID BY UNANIMITY. 1. "Although the physician is a service provider, the Consumer Protection Code, in Paragraph 4 of article 14, has made an exception to the system of objective liability established therein. It says: "The personal responsibility of liberal professionals will be ascertained by verifying guilt." (in Sergio Cavalieri Filho, Civil Liability Program) 2."The alleged fault, in the form of negligence, of the adhereist physician is mainly for having given the daughter of the appeal the appropriate diagnosis and the care and

measures that the situation required. It should be emphasized that the alant's culpable conduct was the cause of the gap in the patient's adequate care, which created or aggravated the clinical picture of the patient." 3."In other words, moral damage exists in re ipsa; it derives inexorably from the offensive fact itself, in such a way that, if proven the offense, ipso facto is demonstrated the moral damage in the guise of a natural presumption, a hominis or facti presumption that derives from the rules of common experience". (in Sergio Cavalieri Filho, Civil Liability Program) 4."It is not worth saying that the victim/ patient would die anyway due to the aggressiveness of the disease. The theory of the loss of a chance does not rule out the possibility that the death event arises exclusively from the disease; on the contrary, it works with this possibility, but without losing sight of the probability of cure, acting, the theory, in the hypotheses in which there are doubts about the appropriate cause of the damage. It involves missed chances, and that's all. It is sufficient that there are serious chances of cure or a less suffered survival, lost due to the doctor's guilt." 5."Alongside general criteria such as the incommensurability of moral damage, the care of the victim, the astonewism of their suffering, the economic context of the country, etc., the doctrine recommends the examination: (i) of the reprehensible conduct, (ii) of the intensity and duration of suffering; (iii) the economic capacity of the offender and (iv) the personal conditions of the offended."

(TJ-PR 8178449 PR 817844-9 (Judgment), Rapporteur: José Laurindo de Souza Netto, Trial Date: 08/03/2012, 8th Civil Chamber)

By the way, the same is the understanding of the Supreme Court of Justice (STJ), given that:

"the Second Class of the Superior Court of Justice (STJ) did not know of appeal of the municipality of Vargem Grande do Sul (SP) and the company that manages the Emergency Care Station (PPA) of the city, thus maintaining the condemnation of both parties to the payment of R $ 70 thousand in compensation for moral damages to the family of a farmer who died as a result of negligence in medical care. In the appeal against the decision of the Court of Justice of São Paulo (TJSP), municipality and company claimed there was no evidence of guilt or omissive conduct of the doctor and that all necessary procedures at the time were performed. They also argued that the indemnity amount is exorbitant and that there was defense-deceiting in the rejection of the production of evidence. The rapporteur, Minister Herman Benjamin, however, did not know of the appeal, because the analysis of the arguments would require the review of evidence, which is defiant by the jurisprudence of the court in special appeal (BRASIL, 2018)."

The legal duty of liability may be based on contract, fact or omission, thus resulting from both the convention and the legal standard.

Civil liability can therefore be defined as the obligation to repair the damage caused to someone (CROCE, p. 55, 2002)

For the medical error to remain characterized, it is necessary to evidence of a failure in the practice of the profession. In this sense, in order to have the possibility of error, it is necessary that there is a standard reference of what is correct and beautiful, thus having

a parameter of judgment (MORAES, p. 30, 2003), transcending evident considerations of carelessness or medical incompetence to the rules of his art, as a result of the total or partial commitment of the patient's life attended by the hands of the professional.

The medical error can be seen with little or great difference, it is enough that it has reached the objective aimed at the time of contracting the service. (SAMPAIO, p. 101, 1999).

In cosmetic surgery, the cure would undoubtedly be the absence of anomaly, the modification of the initial profile, directed to the beautification of the being, enjoying full well-being and joviality, offering comfort, even, to the professional himself who will feel good when his conscience is calm.

Civil liability deals with the application of measures that force an individual to repair the moral or property damage caused to third parties, due to an act committed by him or her, by a person for whom he/she is responsible, for something belonging to him or of simple legal imposition.

Therefore, if there is damage or injury, the cause of the damage must be held accountable, so that it indemnifys the injured party.

Thus, if, on the one hand, the doctrine to conceptualize civil responsibility is difficult, on the other hand, it is easy to understand the consequences and practices existing in social relations.

The requirement to repair the damage is undoubtedly at all times the obligation to repair a certain injury caused. However, it is a question that leads to divergence, giving rise to currents that divide authors, based on the resciatory duty, which gives rise to objective and subjective theory inspired by risk and guilt.

The essence of responsibility based on subjective theory comes to be based primarily on research or inquiry into how human behavior contributes to the harm suffered by the victim, not only to the physician's conduct.

Thus, it does not consider itself capable of generating any human fact.

Only a certain conduct which the legal order has certain requirements or characteristics will be given to that effect.

Therefore, considering that the theory of subjective responsibility is based on the assumption of the obligation to indemnify or repair the damage, the agent's culpable behavior or simply his guilt, covers, in its context, the fault itself and the officer's fault.

The fault, in a given harmful episode, may even be of the injured, the injured or both, injured and injured.

If there was a portion of each person's guilt in the occurrence of the injury, by the subjective theory applied to the case, the burden of recomposition will be proportionally attributed, in the exact measure of the contribution of each one, in the final harmful result.

In this context, it is overseen that the medical professional must be the authority to perform the inherent function, assigning specific responsibility to his acts.

Negligence, in the care of the duty of a doctor, contributes effectively to the link of guilt and responsibility, and the patient must respond to the harmful consequences due to omission or recklessness.

The fundamental process for the physician to be exempt from any problems related to care is to keep prepared with records, from the moment of the consultation, examinations and surgical procedures to the final care, constituting a skilled documentation to justify their acts.

This is because the non-observance of a technical rule, in the art of the profession of plastic surgeon physician, culminates in aggravation of the risk, which cannot be confused with malpractice, constituting a modality of guilt, being responsible indifferent to the technical knowledge received, employing them lightly (ALCANTARA, p. 11, 1971).

Civil liability is the obligation that can be the responsibility of a person (professional) to repair the damage caused to others by their fact or by the fact of the persons or things dependent on it.

Medical civil liability, therefore, is nothing more than the obligation of the doctor or the clinic responsible to bear the damage caused to others, when there is proof of damages resulting from the performance of these professionals.

It is coherent to think that the responsibility of the professional is closely linked to the art of healing, of establishing improvement in relation to the disease and of effecting the promotion of the healing process.

Among the damages resulting from surgeries or medical-surgical procedures, one can highlight those of aesthetic order and those derived from the moral distress of the patient/consumer.

Such questions are extremely important for the composition of damages resulting from acts that have as a consequence damage to human morphology.

The patient, when seeking a professional to perform tests, treatments or even surgical interventions, is, in fact, establishing conventions.

In this position, it is possible to discuss the obligations involved in contracts to provide medical services, whether they are medium or result.

In general, it is addressed that the medical contract involves an obligation of means, especially when faced with complicated surgeries and with a high degree of dangerousness.

On the other hand, there is a growing movement that claims to be the obligation of result certain medical contracts, such as those aimed at the aesthetic improvement of a given person (non-reparative plastic surgery).

More modernly, according to Art. 14, § 4 of the Consumer Protection Code, the personal responsibility of liberal professionals will be ascertained by verifying guilt, tempering by the reversal of the burden of proof, in civil proceedings, in favor of the consumer.

Miguel Kfouri Neto, quoting Zelmo Denari (2001, p. 192), discusses the provisions of consumerist status:

> "Doctors and lawyers – to name some of the best-known professionals – are hired or constituted based on the trust they inspire their clients. Therefore, they will only be liable for damages when the occurrence of subjective guilt is demonstrated, in any of its modalities: negligence, recklessness or malpractice" (2001, p., 29)

Thus, the medical error, in the civil or patrimonial liability of the physician for acts resulting from his office, is based on contractual responsibility and guilt, being indispensable the characterization of material or moral damage, the causal link and the absence of the hypotheses of excluding guilt: fortuitous case and force greater.

2 I THE DOCTOR'S CIVIL LIABILITY FOR AESTHETIC DAMAGE

The aesthetic damage, in turn, defines Morais, is conceptualized as being all morphological alteration of the individual that, in addition to the cripple, covers deformities or deformations, marks and defects, although minimal, and that imply in any aspect an affection of the victim, consisting of a simple disliking injury or a permanent reason for exposure to ridicule or inferiority complex, exerting or not influence on their work capacity (MORAES, p. 112, 2003).

Aesthetic injury, for some, constitutes a moral damage that may or may not constitute a property injury.

Following this line of reasoning, moral damage will always cover the aesthetic or morphological when the injury is extrapatrimonial, because the latter is a kind of the former.

An example is observed that corroborates with the clarity of this assertion. A mannequin professional who may need her beautiful face and body to be able to have her livelihood, in a given plastic surgery, comes this model to suffer injuries that cause permanent deformities in her morphology (body and face), preventing her from working, for lack of job offers. In this hypothesis, two types of losses are clearly envisaged, one of an extra-asset order, the other of a patrimonial order.

Nevertheless, it is possible to accumulate compensation for aesthetic and moral damage. This is the content of Summary 387, approved by the Second Section of the Superior Court of Justice (STJ).

According to the established understanding, it is up to the accumulation of both

damages when, even if arising from the same fact, it is possible to separate identification of each of them.

With regard to the result of the obligation, according to Aguiar Dias, doctrine and jurisprudence are inclined to admit that the obligation to which the plastic surgeon is subjected is not different from that of other surgeons, because it runs the same risks and depends on the same law (DIAS, p. 121, 2000).

It would, therefore, like that of physicians in general, be an obligation of half (DIAS, p. 123, 2002).

Conceptualizes Yuri A. Mendes de Almeida (2007):

> "The obligation of means is one in which the professional does not undertake a specific and determined objective. What the contract imposes on the debtor is only the performance of a certain activity, towards an end, but without the commitment to achieve it. The contractor is obliged to lend attention, care, diligence, smoothness, dedication and all available technique without guaranteeing success. In this modality the object of the contract is the debtor's own activity, and it is up to him to make every possible effort, as well as the diligent use of all his technical knowledge to carry out the object of the contract, but it would not be inserted there to ensure a result that may be unrelated to or beyond the scope of his efforts. (...) In the obligation of result, there is the commitment of the contractor with a specific result, which is the apex of the obligation itself, without which there will be no fulfillment of this. The contractor undertakes to achieve a determined objective, so that when the desired end is not achieved or is achieved partially, the obligation is not met."

Plastic surgery, with exclusive or predominantly aesthetic purposes, is beautifying surgery and, therefore, the obligation is not of medium, but of result.

In the event that the result is negative and opposite to what was agreed, the surgeon's professional guilt is presumed until he proves his non-fault or any other exonerative cause.

The medical error, in the face of the Consumer Protection Code, elaborates spheres also arranged in the Code of Ethics, whose violations can become civil and criminal proceedings. (BERNARDI, p. 13, 2000)

The damage by which the physician responds is the result, directly, of his action or omission, because this result is in line with the causality posed by the physician's action, an understanding already existing in Roman Law (OLIVEIRA, 2017):

> "*sicut medico imputari eventus moetalitatis non debet, ita quod per imperitiam commisit imputari ei debet* (as well as not imputing to the doctor the event of death, he must be attributed to what he committed by malpractice)."

Usually, when it comes to medical error, it is observed that it is related to the violation of the fundamental principles, but many specialties are at risk, which invokes the cause-and-effect relationship, and often between decision-making and the time in progress contributed

to the aggravation of the case which may present an unexpected result, therefore, it may exempt the responsibility of the doctor (BERNARDI, p. 13, 2000).

As an example, plastic surgery is. (BERNARDI, p. 13, 2000).

The injury agent either assumes the harmful result or assumes the risk that it occurs or acts with recklessness, negligence or malpractice.

In the first case, he would be deceitanded and, in the second case, guilt. The legislation in practice admits them as equivalent, with the common name of guilt.

The conduct of the agent responsible for the damage would always be addicted to guilt.

Finally, with regard to compensation for moral damages, Walmir Oliveira da Costa (2007, p.123) says that reparation has a double function: reparatory and punitive, expressing them:

> "a) THE REPARATORY FUNCTION: Its purpose is to offer compensation to the injured party and thus mitigate their suffering, falling into a reasonable amount of the offending person's assets, in such a way that he does not persist in the unlawful conduct;
>
> b) THE PUNITIVE FUNCTION: It consists in applying a penalty to the injured person, aiming to curb or inhibit attacks or attacks against the personal rights of others, reason to function as a penalty of a pedagogical nature. It serves as a warning that the offending person not reinstins in the practice of acts harmful to the personality of the person of the person and an example to society that, in its relations, must be guided by ethical conduct and mutual respect in the field of legal and social relations."

This agent is therefore obliged to compensate for the damage, when his acts or facts are harmful to the right or interest of others, provided that he can be found guilty with guilt - his way of acting

Subjective theory is based, as observed, on responsibility, because once guilt has been proven or, in certain cases, presumed, an indemnification is given, finding support, especially, in art. 186 of the Brazilian Civil Code.

This theory was the social code. For this reason, in principle, civil liability will arise from proof of guilt, focusing on all those who, in one way or another, are linked to the damage caused.

However, for the characterization of medical guilt, it is enough to simply volunteer and spontaneity of conduct, and therefore the intention is practically unnecessary, because the guilt, although very light, obliges the causetor to indemnify.

Even if, when it comes to human life, one does not admit "small or very light" guilt, without proof of this subjective element of civil liability, guilt, everything must be debited to misfortune.

CAPÍTULO 3

BIO ETHICS AND MEDICAL LAW

To better reflect on bioethics and medical law, it is essential to highlight the study "Bioethics and Medical Law: the principle of beneficence in Medical Civil Responsibility", written by the Professor of Bioethics and Medical Ethics, Rector of the State University of Montes Claros, which we will now expose.

Medicine and doctors are heavily impregnated by Hippocrates' charitable paternalism. The Hippocratic oath is engraved: "I will apply the schemes for the good of the sick, according to my knowledge and my reason, never to harm or harm anyone" (PANASCO, 1984:451). Thus, Cós' physician and his successive disciples, until today, have always practiced the "bonum facere" according to "his knowledge" and "his reason", that is, according to his criterion of professional judgment, and the patient always remained in the condition of passive recipient of the good granted to him, whose criteria of action escape his knowledge and possible control.

There is, therefore, in hippocratic medicine, a vertically paternalistic beneficence that does not allow the patient, the main objective of the medical act, 1 DRUMOND, J. G. de F. UNIMONTES CIENTÍFICA. Montes Claros, v.1, n.1, Mar/2001. even express their interest in receiving it, since it seems to be implicit in the judgment of the medical professional who, being a benefactor action, there would be no reason to refuse it. Hence, medical beneficence often represents no more than an imposing paternalism that is a ceresthing and cerering of the patient's autonomy.

However, the encounter between modern civilization and democracy has produced profound changes in social relations, reaching all professional segments. Consequently, the doctor's relations with the patient were changed, shifting the imposed and imperial verticality of the physician to the democratic horizontality in making decisions about the health of each individual. However, despite the advances so far verified in this area, there is still a relationship between the doctor and his patient a power relationship of those who hold the technique and science for those who ignore them, in addition to an asymmetric relationship determined by the submissive posture that the altered state of health itself provides to the patient, who behaves as a victim of the world or of himself.

The changes provided by the emergence of successive generations of law, as NORBERTO BOBBIO (1992:4-10), in "The era of rights", caused the citizen to definitively conquer the right to decide on himself, including, and mainly, the most particular issues

of his state of health.

In this strongly propulsive social context of a new approach in social relations, it emerges in the United States of America, through POTTER (1971), a new ethic, which he called Bioethics that, in his opinion, would promote the transition of man towards a technological future capable of extraordinarily expanding his life, while safeguarding his dignity. The bioethical word was born exactly from the conviction that POTTER had (1971) in the future of humanity, illuminated by the achievements of biology and biologists. I wasn't wrong. The deciphering of the human genome, with all its possible implications and even the perspective of human cloning, are examples that we are on the eve of a "Brave New World", anticipated by HUXLEY (1932) if there is, in contrast, the adoption of safeguards that prevent any attempt at violation of human dignity.

Certainly, as FRANCE (1994) has expressed, the last battle for human dignity will be fought not around a table of military strategists or in the improvement of attack or defense weapons but, rather, in the research laboratories of molecular genetics.

Medical practice has always had as a guiding principle the beneficence, which aims at the well of the patient, his well-being and his interests and whose benefits are established by criteria applied in medical knowledge. For PELLEGRINO (1997) medicine as a human activity is, by necessity, a form of beneficence. Beneficence that should mean health promotion and disease prevention, sopesando bens and evils, but always seeking the predominance of the former. Beneficence should not cause harm – hence inferring a second basic principle of Bioethics which is that of non-maleficence – but to maximize benefits and minimize losses, as described in the Belmont Report (CLOTET, 1993).

However, the doctor cannot exercise beneficence in an absolute way, but within the limits established by the dignity intrinsic to each person, respecting him the freedom to decide on himself, to which the name of autonomy is given.

1 I GENERAL CONTEXT ON THE DISCUSSION OF THE EVOLUTION OF MEDICAL PRACTICE

Since the most remote periods, medical practice is understood as the art of caring, directly implying in the configuration of the triad relationship: doctor, patient and family.

In this period, it was common to visit the doctor from home to home, where he performed the patient's consultation in his own bed and everyone in the house sought *to perform the follow-up ipsis litteris, which* had been guided.

This relational model is understood as virtuous, that is, one that enables an encounter between the wise priest and the individual who is in grave difficulty, where he will obtain help for his recovery, as can be seen in the passage of the Hippocratic Oath:

> I will immaculately preserve my life and my art ... in every house, then I will enter for the good of the sick, keeping away from all the voluntary damage and all seduction, especially of the pleasures of love ... if I fulfill this oath faithfully, may I enjoy happily my life and my profession, honored forever among men; if I walk away from it or infringe, the opposite happens (CREMESP, 2022).

In this passage, it is possible to perceive the sacredness of such a profession, thus, the conduct of this figure of authority could not be challenged. Thus, the family members/ caregivers sought to comply with diligence with the orientations given in the consultation.

This relationship was pronounced by the asymmetry of power, with great authority of the physician before the patient and his/her family members, as presented in the following excerpt:

> If an ailing man refuses the medications prescribed by a doctor called by him or his family members, he can be treated on his own will (FLORENCE, 1459 *apud,* SIQUEIRA, 2020).

This understanding was in line with the reality of the classical goals of medicine, which were: a) to save and prolong life; b) health promotion and maintenance; c) relief of pain and human suffering (PESSINI, 2007, p. 46-47), and at this moment, the physician was the protagonist in a fallonomic model.

In this period, the act of saving and prolonging life was noble, the understanding was that he could use all available resources to ensure this goal, even if the patient suffered and/or did not want the intervention.

In relation to health promotion and maintenance, they were performed in order to meet health specificities and follow-up in the face of treatment, in order to seek restoration within the possible conditions.

Then, when dealing with pain relief and human suffering, it is essential to emphasize that it was related to the physical aspect in the face of a pathology, and that the aspect of comprehensive care, at this time, was not recognized.

In turn, over the centuries, it was observed that this relationship generated a relational catastrophe, because the focus of action was only for the disease and not for the sick person. On the other hand, the aspects that were important to the patients were disregarded.

However, in the modern world, there was a change of care, no longer performing the home visit to undertake a hospital-centered action where all the conducts were based on the scientific knowledge of the doctor along with the use of the technological mechanisms of the time, as well as the mastery and uses of drugs.

This change generated situations of conflict, since medical professionals began to be questioned about the conducts administered. Thus, to safeguard the doctor-patient relationship, the contractualist model was used, becoming the patient its protagonist.

With this abrupt change, the patient found himself alone, because it was no longer the medical professional who was the protagonist and performed the procedures according to his technical interpretation, but concerned the patient to choose a certain procedure or not, as well as seek to have the science about the risks and possible benefits.

In the case of serious diseases and difficult to control, the medical sciences sought alternatives to optimize therapies, aiming to provide well-being and quality of life to patients with such pathologies.

By offering new therapeutic approaches, moving from conservative to one to which it was in the process of analysis, we sought to operationalize protocols and the patient's consent for the enterprise.

Thus, in view of these important changes and emergy objectives, authors such as Daniel John Callahan proposed reflections on the new priorities of medicine for the contemporary world.

As objectives of contemporary medicine, Pessini clarifies: a) prevention of disease and suffering, promotion and maintenance of health; b) relief of pain and suffering; c) healing and care of people with curable diseases and those whose diseases are not curable; d) to avoid premature death and to seek death in peace (2007, p. 56).

In view of these objectives, we perceive a medicine that seeks to meet and care for the integral human being, that is, in its physical, psychic, social and spiritual aspects. It is also worth mentioning that the aspect of human finitude begins to be understood as natural and no longer as failure.

Due to comprehensive care, it is understood that medicine has limits and, for this, it is important to have a collaborative network of professionals from different areas of care, so that they can act together to effect a holistic approach, that is, that capable of understanding the human being completely.

At the same time, in order to accommodate the needs of patients, it is necessary not only to treat pain, but to welcome and minimize the situations that generate suffering, bringing to the therapeutic conduct facts and values.

For this, it is called a model of deliberation, that is, where the protagonism is shared, the patient is not alone, he will have at his disposal the presence of health care professionals, having subsidies to choose what gives him meaning, respecting his biography and highlighting evidence-based conducts.

Thus, in view of a terminal reality, where there is a serious, progressive and potentially fatal disease, this model is stimulated as a reasonable, prudent approach that respects the patient's historicity in the field of values.

2 I MEDICAL OBJECTIVES, FUTILE TREATMENT AND TERMINAL SITUATIONS

The reality of clinical practice reverberates situations in which time is fundamental to ensure the effectiveness of the therapeutic approach, in order to safeguard life, minimize situations of complications and minimize suffering.

On the other hand, when the objectives of contemporary medicine are highlighted, we perceive a model that aims to highlight an action centered on the person. Therefore, it is essential to investigate and point out, technically, elements that can awaken life spirit and encouragement for the continuity of treatment.

In turn, when situations in which there is no effectiveness of treatment are identified, it is necessary to present the situation to the patient and to the people he chooses and has confidence, so that everyone can, together, dialogue, in a simple language, in order to understand the real situation and highlight what are the possibilities available.

In the meantime, when it comes to the theme of futile treatment, Pessini points out that:

> The hippocratic tradition warned doctors not to cure patients who were completely and irreversibly taken by diseases. The contemporary interpretation is that physicians should not provide treatments considered futile. It should be noted that warning is not a "guideline", nor a mere suggestion. She says what shouldn't be done. Advancing in history into the Middle Ages, when Western Christianity laid the moral foundation for all Europe, the Medieval Church raised all human life to the condition of sacred: it is divine creation and therefore must be preserved. can save human life so it must do so (PESSINI, 2007, p 64).

In this sense, faced with a scenario of imminent and inevitable death, discernment about the importance of scientific evidence should be considered when it comes time to move from curative therapies to therapies that are purely maintenance and comfort, thus considering criteria of efficacy, benefit and costlyness.

It is not a question of leaving the patient without care, but of offering the appropriate approach to the clinical situation faced at the moment. Thus, symptom control care and psychosocial and spiritual support should be used through a multidisciplinary team.

For the administration of therapeutic approaches, it is essential to have the clarity of its purpose, because the farewell of life is a unique moment. Therefore, professionals should seek to effect pain relief, reduction of suffering and provision of palliative care.

In fact, palliative action strives to ensure a dignified, careful and least painful death possible. For this, it is necessary to accept the personal demands of patients and integrate clinical practice into an approach that respects the wills of the patient in the field of values.

It is worth mentioning that, in situations in which the patient is terminally terminal, his/

her family members use the medical professional, so that they can find new perspectives for treatment and can reverse the situation.

However, these requests cannot be made many times, because, in addition to them generating suffering, their effectiveness is zero, with the risk of effecting dithanasia.

> Etymologically means exaggerated prolongation of the agony, suffering and death of a patient. The term can also be used as a synonym for futile and useless treatment, which has as a consequence a medically slow and prolonged death, accompanied by suffering. With this conduct, life itself is not prolonged, but the process of dying (PESSINI, 2007, p. 30).

On the other hand, when talking about dignified death, orthothanasia is highlighted – characterized by death at its right time, without unnecessary abbreviations and without additional suffering, it is sensitive to the process of humanization of death (PESSINI, 2007 p. 31).

The New Code of Medical Ethics provides, in its first chapter, on medical performance in terminal situations:

> XXII - In irreversible and terminal clinical situations, the physician will avoid unnecessary diagnostic and therapeutic procedures and provide patients under their care with all appropriate palliative care (CFM, 2018, p. 17).

Thus, it is perceived that the physician will have support by evidencing orthothanasia in his clinical practice, because it is able to offer dignity to the process of terminality, exalts the dignity of the human person and enables relief from suffering.

3 I BIOETHICS AND BIOLAW

Bioethics and Biodireito are areas that interconnect and have as characteristic an action that aims to provide their interlocutors with the care of the human person in its integrality. One certifies the commitment of the health professional's performance ethically and the other aims to comply with the terms of the legal system.

When in list the principle of the dignity of the human person, it is necessary to emphasize that both areas focus to highlight this fundamental element, because, when referring to health care, this principle should govern all professional performance.

> The principle of the dignity of the human person is protected by the Federal Constitution. This principle includes rights of extreme foundationability, such as respect for life, freedom, the physical and intimate integrity of all. The protection of the dignity of the human person by the Constitution makes it the main support of the existence of fundamental rights, characterizing the Democratic State of Law (TORRES, 2022).

In this sense, it is observed that, while Bioethics makes a bridge between the

patient and the professional, in order to establish an ethical-solidarity bond, the Biodireito makes the bridge between the patient and justice, in order to clarify the normative-legal action and provide justice resources.

Moreover, in the contemporary world, a prominence is denoted in cultivating a celebration between the parties, that is, legal documentation, in order to make greater clarity in the face of clinical health actions.

To consider the legal aspects in the hospital and doctor-patient relationship is to offer resources, thus avoiding misadjustments and, in various situations, offer legal technical support to restore the error caused.

CAPÍTULO 4

CODE OF MEDICAL ETHICS, BRAZIL

FEDERAL COUNCIL OF MEDICINE
1988

...

Brazil's Federal Council of Medicine approved the current Code of Medical Ethics in January 1988, rescinding the 1965 Code of Medical Ethics and the 1984 Brazilian Code of Medical Deontology. The preamble states that the code "contains the ethical standards governing physicians"; that "organizations delivering medical services are subject to the standards in this code"; and, interestingly, that "those who violate this code are subject to disciplinary action as stated by law." Other interesting features of the code include: (1) statements regarding occupational health and the natural environment (articles 12, 13); (2) the right of physicians to strike (article 24); and (3) the requirement that protocols for medical research be submitted to an independent committee for approval and monitoring (article 127).

Chapter I

Basic Principles

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ART. 6 – The physician shall have utmost respect for human life, always acting in the interest of the patient. He/she will never use his/her knowledge to inflict physical or moral suffering, to end the life of an individual, or to allow coverups against his dignity and integrity.

ART. 7 – The physician shall practice his/her profession with ample autonomy and is not forced to provide professional services to an individual against his/her will, except in the absence of another physician, in emergency cases, or when his refusal could cause irreversible damage to the patient.

ART. 8 – The physician may not, under any circumstance or pretext, renounce his professional freedom and shall disallow any restriction or imposition that could harm the efficacy and appropriateness of his/her work.

...

ART. 11 – The physician shall keep information, obtained during the practice of his profession, confidential. The same applies to his/her work with businesses, except in cases when such information damages or poses a risk to the health of an employee, or the community.

ART. 12 – The physician shall promote an appropriate working environment for the individual, and the elimination, or control, of risks inherent in his/her work.

ART. 13 – The physician shall inform competent authorities of any forms of pollution and deterioration of the environment, that pose a risk to health and life.

ART. 14 – The physician shall promote the improvement of health conditions and medical service standards, and take part in responsibilities in relation to public health, health education, and health legislation.

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Chapter II

Rights of the Physician

The physician has the right to:

ART. 20 – Practice Medicine without being discriminated against in terms of religion, race, sex, nationality, color, sexual choice, social status, political opinion, or for any other reason.

ART. 21 – Recommend adequate procedures to the patient, observing regularly accepted practice and respecting legal standards in force in the country.

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ART. 24 – Suspend his/her activities, individually or collectively, when the public or private institution for which he/she works, does not offer minimal conditions for the practice of his/her profession, or does not pay accordingly, except in conditions of urgency and emergency. This decision shall be communicated immediately to the Regional Council of Medicine.

...

ART. 27 – When employed, dedicate the time and professional experience recommended for the performance of his/her duties, to the patient, avoiding excessive workloads or consultations that could harm the patient.

ART. 28 – Refuse to perform medical practices, although allowed by law, that are contrary to his/her conscience.

Chapter III

Professional Responsibility

The physician is forbidden:

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ART. 40 – Not to inform the individual about working conditions that could pose a risk to his/her health. These facts must be communicated to those in charge, the authorities, and the Regional Council of Medicine.

ART. 41 – Not to inform the patient about social, environmental, or professional

implications of his/her illness.

ART. 42 –To practice or recommend medical procedures, not necessary or forbidden by local law.

ART. 43 – Not to abide by specific legislation on organ or tissue transplants, sterilization, artificial insemination, and abortion.

...

Chapter IV

Human Rights

The physician is forbidden:

ART. 46 – To perform any medical procedure without previous explanation and consent of the patient or his/her legal representative, except in cases of imminent threat to life.

ART. 47 – To discriminate against a human being in any way or under any pretext.

ART. 48 – To exercise his/her authority in such a way that it limits the right of the patient to decide freely for him/herself or on his/her well-being.

ART. 49 – To participate in the practice of torture, or any other degrading procedures, that are inhuman or cruel; to be an accomplice in these kinds of practices, and not to denounce them when they come to his/her knowledge.

ART. 50 – To provide means, instruments, substances, or knowledge that facilitate the practice of torture or other kinds of degrading, inhuman, and cruel procedures, in relation to the individual.

ART. 51 – To force-feed any person on a hunger strike, who is considered capable, physically and mentally, of making perfect judgement of possible complications from this attitude. In these cases, the physician shall inform the individual of possible complications from prolonged lack of nutrition and treat him/her if there is imminent danger to life.

ART. 52 – To use any process that might change the personality or conscience of an individual, to decrease his/her physical or mental resistance during a police investigation or of any other kind.

ART. 53 – Not to respect the interest and integrity of an individual, by treating him/her in any institution where the person is being kept against his/her will.

Any procedures damaging the personality or physical or mental health of an individual, while under the care of a physician, shall compel the physician in charge to denounce this fact to the competent authorities and to the Regional Council of Medicine.

ART. 54 – To provide means, instruments, substances, knowledge, or to participate

in any way, in the execution of a death penalty.

ART. 55 – To use the profession to corrupt customs or to commit or favor crime.

Chapter V

Relation with Patients and Family Members

The physician is forbidden:

ART. 56 – To disregard the right of the patient to decide freely about the performance of diagnostic or therapeutic practices, except in cases of imminent loss of life.

ART. 57 – Not to use all available diagnostic and treatment means within his/her reach in favor of the patient.

ART. 58 – Not to treat a patient, looking for his/her professional care, in an emergency, when there are no other physicians or medical services available.

ART. 59 – Not to inform the patient of the diagnosis, prognosis, risks and objectives of treatment, except when direct communication may be harmful to the patient. In this case, communication shall take place with the legal representative of the patient.

ART. 60 – To exaggerate the seriousness of a diagnosis or prognosis, to complicate treatment, or to exceed the number of visits, consultations, or any other medical procedures.

ART. 61 – To abandon a patient under his/her care.

1. –Under circumstances, that in his/her view are harmful to the doctor–patient relationship or that interfere with full professional performance, a physician has the right to renounce treatment, as long as this fact is previously communicated to the patient or his/her legal representative, with the assurance of continuity of care and supplying all necessary information to the substituting physician.
2. –Except in cases of just cause, communicated to the patient or his/her family members, the physician may not abandon the patient for having a chronic or incurable disease. The physician shall continue to treat him/her, even if only to alleviate physical or psychological suffering.

ART. 62 – To prescribe treatment or other procedures without examining the patient directly, except in emergency cases or the impossibility of performing such an examination. In this case, the examination shall be performed as soon as possible.

ART. 63 – Not to respect the modesty of any individual in his/her professional care.

ART. 64 – To oppose the realization of a medical inquiry requested by the patient or his legal representative.

ART. 65 – To take advantage of the doctor–patient relationship to obtain physical, emotional, financial, or political advantages.

ART. 66 – To use, in any case, means to shorten the life of a patient, even if requested

to do so, by the patient or his legal representative.

ART. 67 – Not to respect the right of the patient to decide freely on a contraceptive or conceptive method. The physician shall always explain indication, reliability, and reversibility, as well as the risk of each method.

ART. 68 – To practice artificial insemination, without total consent by the participants, with the procedure duly explained.

ART. 69 – Not to maintain medical records for each patient.

ART. 70 – To deny the patient access to his/her medical records, clinical or similar records, as well as not to provide explanations necessary for their understanding, except when this incurs risks for the patient or third parties.

ART. 71 – Not to provide a medical opinion to the patient, upon referral or transfer for the continuity of care, or upon release, if requested to do so.

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Chapter IX

Medical Confidentiality

The physician is forbidden:

ART. 102 – To reveal the fact that he is aware of information received during the practice of his/her profession, except for just cause, legal duty, or express authorization by the patient.

This is maintained:

3. Even if the fact is public knowledge or if the patient is deceased.
4. When testifying. In this instance, the physician shall present him/herself and declare his/her constraint.

ART. 103 – To reveal a professional secret relating to a minor, including to his/her parents or legal representatives, as long as the minor is capable of resolving his/her problem by his/her own means, except when the lack of revelation could imply damage to the patient.

ART. 104 – To make reference to identifiable clinical cases, exhibit patients or their photographs in professional announcements or during medical programs on radio, television or movies, as well as in articles, interviews or newspaper reports, magazines or other publications not specific to Medicine.

ART. 105 – To reveal confidential information obtained during the medical exam of workers, including upon demand by directors of businesses or institutions, except if silence poses a risk to the health of workers or the community.

ART. 106 – To provide insurance companies with any information about the circumstances of the death of his/her patient, beyond that contained in the death certificate,

except by express authorization of the legal representative or heir.

ART. 107 – Not to inform his/her assistants and not to promote the respect of professional secrecy, as required by law.

ART. 108 – To facilitate the handling and knowledge of medical records, forms, and other kinds of medical observations, subject to professional secrecy, by persons not obligated by this commitment.

ART. 109 – Not to maintain professional secrecy when recovering professional fees by judicial or extra-judicial means.

...

Chapter XII

Medical Research

The physician is forbidden:

ART. 122 – To participate in any type of experiment with human beings with warlike, political, racial, or eugenic reasons.

ART. 123 – To perform research on an individual, without his/her express consent in writing, after having had the nature and consequence of research duly explained.

If the patient is not in condition to give his/her consent, research shall only be performed, in his/her own benefit, after express authorization by his/her legal representative.

ART. 124 – To use any type of experimental treatment, not approved for use in the country, without due authorization by competent authorities and without the consent of the patient or his legal representative, duly informed of the situation and possible consequences.

ART. 125 – To promote medical research in the community without knowledge by the community and with a purpose not directed at public health, in consideration of local characteristics.

ART. 126 – To obtain personal advantages or have any commercial interest or to renounce his/her professional independence in relation to medical research financing entities in which he/she participates.

ART. 127 – To perform medical research on individuals without having submitted the protocol for approval and monitoring of a commission not subject to any entity related to the researcher.

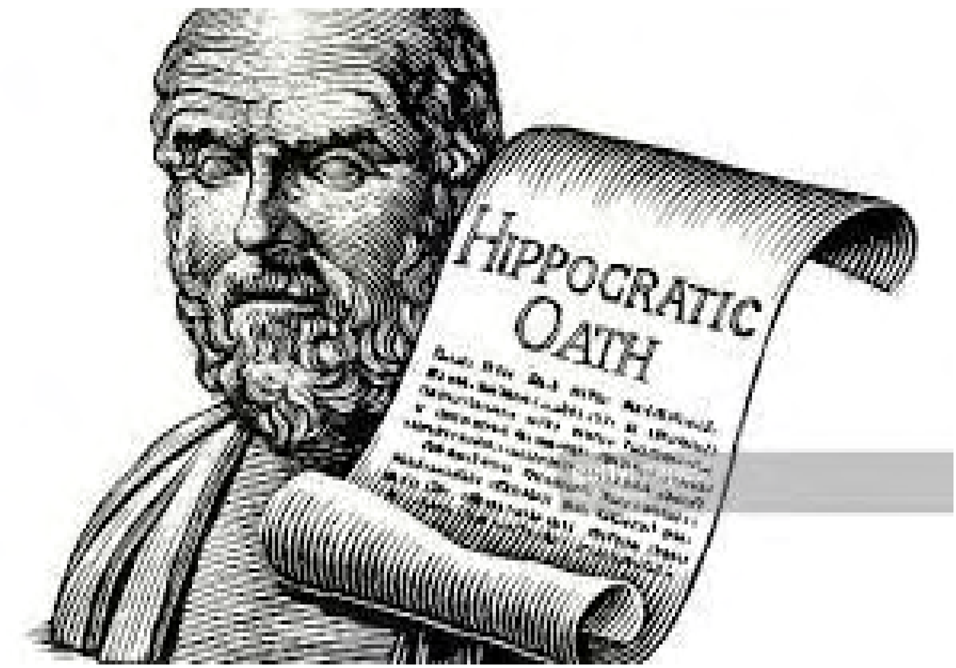
ART. 128 – To perform medical research on volunteers, healthy or not, who have a direct or indirect relation of dependency or subordination with the researcher.

ART. 129 – To perform or participate in medical research in which there is a need to suspend or to stop using recognized treatment, thereby harming the patient.

ART. 130 – To perform experiments with new clinical or surgical treatment on incurable or terminal patients, without reasonable hope for positive effects, imposing additional suffering.

CAPÍTULO 5

HIPPOCRATIC OATH



https://www.linkedin.com/pulse/educators-hippocratic-oath-las-vegas-tragedy-inspired-ian-a-roberts

Hippocratic oath, ethical code attributed to the ancient Greek physician Hippocrates, adopted as a guide to conduct by the medical profession throughout the ages and still used in the graduation ceremonies of many medical schools. Although little is known of the life of Hippocrates—or, indeed, if he was the only practitioner of the time using this name—a body of manuscripts, called the Hippocratic Collection (*Corpus Hippocraticum*), survived until modern times. In addition to containing information on medical matters, the collection embodied a code of principles for the teachers of medicine and for their students. This code, or a fragment of it, has been handed down in various versions through generations of physicians as the Hippocratic oath.

The oath dictates the obligations of the physician to students of medicine and the duties of pupil to teacher. In the oath, the physician pledges to prescribe only beneficial treatments, according to his abilities and judgment; to refrain from causing harm or hurt; and to live an exemplary personal and professional life.

The text of the Hippocratic Oath (*c.* 400 BC) provided below is a translation from Greek by Francis Adams (1849). It is considered a classical version and differs from contemporary versions, which are reviewed and revised frequently to fit with changes in modern medical practice.

> *"I swear by **Apollo** the physician, and **Aesculapius**, and Health, and All-heal, and all the gods and goddesses, that, according to my ability and judgment, I will keep this Oath and this stipulation—to reckon him who taught me this Art equally dear to me as my parents, to share my substance with him, and relieve his necessities if required; to look upon his offspring in the same footing as my own brothers, and to teach them this Art, if they shall wish to learn it, without fee or stipulation; and that by precept, lecture, and every other mode of instruction, I will impart a knowledge of the Art to my own sons, and those of my teachers, and to **disciples** bound by a stipulation and oath according to the law of medicine, but to none others. I will follow that system of **regimen** which, according to my ability and judgment, I consider for the benefit of my patients, and abstain from whatever is **deleterious** and mischievous. I will give no deadly medicine to any one if asked, nor suggest any such counsel; and in like manner I will not give to a woman a pessary to produce abortion. With purity and with holiness I will pass my life and practice my Art. I will not cut persons laboring under the stone, but will leave this to be done by men who are practitioners of this **work**. Into whatever houses I enter, I will go into them for the benefit of the sick, and will **abstain** from every voluntary act of mischief and corruption; and, further from the seduction of females or males, of freemen and slaves. Whatever, in connection with my professional practice or not, in connection with it, I see or hear, in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret. While I continue to keep this Oath unviolated, may it be granted to me to enjoy life and the practice of the art, respected by all men, in all times! But should I trespass and violate this Oath, may the reverse be my lot!"*

FINAL CONSIDERATIONS

Among all the professions created by social needs, medicine seems to be the most difficult to be exercised especially from the legal point of view, given the responsibility that is required of those who work in this area, whose main objective is the preservation of life and health of the human being. The doctor's degree means only an official proof of scientific knowledge, that is, the mastery of a content and its respective skills. Professional morality will be demonstrated daily throughout life. Even the best university education and the highest professional specialization do not authorize the professional to act above the norms that govern society. And the exercise of medicine, for its peculiarities, will always provide the possibility of damage to others. This risk, inherent to the medical act, should be a permanent concern of the good professional. Professional error occurs as a consequence of a number of factors, among which are the ones caused by the personality of those who practice medicine, being, therefore, subjective; those derived from poor vocational training (staff or school); from the current health system or model and, finally, those 6

DRUMOND, J. G. of F. UNIMONTES CIENTÍFICA. Montes Claros, v.1, n.1, Mar/2001. produced by the social environment in which the doctor operates. Error is inherent in the human condition and thus it is not possible to eliminate it effectively. The doctor is also subject to him, even if he has the most keen professional conscience. It is this awareness that makes the professional more prudent for each action, in order to minimize their margin of error. What no one else doubts is that the doctor's degree does not mean a passport to impunity. At the beginning of the century, one of the luminars of Brazilian Legal Medicine, Souza Lima, already stated that in Brazil the almost unlimited condescension towards doctors could lead to the great inconvenience of seeing the erroneous and pernicious prejudice that the doctor's degree gives him the privilege of irresponsibility. The times of now have been characterized by prodigality in the advancement of knowledge and, paradoxically, by the emergence of conflicting situations in various fields of human activity as in medicine, which was troubled by the growing technological incorporation with negative repercussions on hippocratic humanism. The social transformations experienced in the 20th century defined new patterns of behavior in the doctor-patient relationship, influenced mainly by a progressive awareness of the population about their rights, bringing to this relationship more participation and, therefore, more democracy. There is a progressive, but vigorous, transformation of the old moralpaternalistic, deontological and professional, towards a new autonomistic, democratic and social ethical posture. To relate harmoniously with the patient ceased to be a concession of the medical professional to become an imposition of the new times. The quality of this relationship is that it will determine the differential in care, building the concept of the doctor with society. In an automated world, interconnected by a profusion of electronic controls that interfere in most human activities, the doctor can never forget one of the pillars that sustain his profession, that is, patient care. Hence, most complaints

by patients against physicians in Brazil - which have been progressively increasing in recent years, to the point of frequenting, with habituality, the news - refers to disorders in the doctor-patient relationship. These complaints reach the Medical Councildaily, often on charges of medical error. The complaints that stand out in medical care are the little or undue attention to the patient during the consultation, the prolonged wait for care or the exaggerated financial interest manifested by some professionals. Knowledge and technical skill are not enough. It is necessary that the doctor always demonstrates to be interested in people promoting, in addition to empathy and respect, the ability to listen; the arcity in observing and the awareness of its limitations. On the other hand, health is not a matter of exclusive medical responsibility, but of the entire society that is organized in order to demand more and better health care conditions, charging the benefits of medical science that the health system has made available only to a minority slice of the population. The doctor cannot give up millennial ethical principles that encourage him to continue seeking a medicine based on beneficence, non-maleficence, justice and 7

DRUMOND, J. G. of F. UNIMONTES CIENTÍFICA. Montes Claros, v.1, n.1, Mar/2001. patient autonomy. Rather, it should advocate an ideal doctor/patient relationship based on transparency, loyalty and mutual trust. For this, it is important to clarify to the patient about the contractual nature of the provision of medical services, where it is the professional's obligation to offer the means to his and the contractor, the responsibility for the treatment and fees, paid by him or the whole of society, through the State. However, the doctor should take responsibility for damage caused to his patients. The civil liability of the physician is a legal institute whose existence is linked to the basic principle of the right that obliges any professional to answer for damages caused to others, committed in the exercise of a profession and consequent to negligence, malpractice or recklessness

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